(1)

Supreme Court, U.S.
FILED

NOV 23 2004

OFFICE OF THE CLERK

No. 04-745

IN THE
**SUPREME COURT OF THE UNITED STATES**

ROBERT D. HOLLOWAY, PETITIONER

v.

ARKANSAS STATE BOARD OF ARCHITECTS, et al., RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

# PETITION FOR A WRIT OF CERTIORARI

A. VAUGHAN HANKINS
Arkansas Bar No. 98138
*STUART W. HANKINS
Arkansas Bar No. 72050
800 W. Fourth Street
North Little Rock, AR 72114
(501) 371-9226

* Counsel of Record

Attorneys for Petitioner

## QUESTIONS PRESENTED FOR REVIEW

I.

WHETHER THE EIGHTH CIRCUIT ERRED IN AFFIRMING THE DISTRICT COURT'S ORDER DISMISSING PETITIONER'S ENTIRE AMENDED COMPLAINT PURSUANT TO THE "ROOKER-FELDMAN DOCTRINE" WHERE PETITIONER'S AMENDED COMPLAINT CONTAINS A SEPARATE COUNT SEEKING PROSPECTIVE DECLARATORY AND INJUNCTIVE RELIEF? IN SO HOLDING, THE EIGHTH CIRCUIT'S DECISION DIRECTLY CONFLICTS WITH DECISIONS OF THE THIRD AND SEVENTH CIRCUITS.

## PARTIES TO THE PROCEEDING

Petitioner
Robert D. Holloway

Respondents
Arkansas State Board of Architects
John D. Harris, individually and in his official capacity as executive director of the Arkansas State Board of Architects
Blake Dunn, individually and in his official capacity as a member of the Arkansas State Board of Architects
Steve Miller, individually and in his official capacity as a member of the Arkansas State Board of Architects
Beth Leake, individually and in her official capacity as a member of the Arkansas State Board of Architects
Larry Black, individually and in his official capacity as a member of the Arkansas State Board of Architects
Cora Bradshaw, individually and in her official capacity as a member of the Arkansas State Board of Architects
Eugene Levy, individually and in his official capacity as a member of the Arkansas State Board of Architects

Larry McGowan, individually and in his official capacity as a member of the Arkansas State Board of Architects
Jeff Shannon, in his official capacity as a member of the Arkansas State Board of Architects
Larry Jegley, in his official capacity as prosecuting attorney for Pulaski County, Arkansas and the Sixth Judicial District on behalf of himself and other similarly situated persons
Mike Beebe, in his official capacity as Attorney General for the State of Arkansas

## CORPORATE DISCLOSURE STATEMENT

Petitioner, Robert D. Holloway, is an individual citizen of the United States of America and a resident of Pulaski County, Arkansas. Petitioner is not a corporation.

## TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW .....i

PARTIES TO THE PROCEEDING.....ii

CORPORATE DISCLOSURE STATEMENT..... iii

TABLE OF AUTHORITIES .....vii

PETITION FOR WRIT OF CERTIORARI .....1

OPINIONS BELOW.....1

JURISDICTIONAL STATEMENT .....1

RELEVANT PROVISIONS.....2

STATEMENT OF THE CASE.....2

REASONS FOR ALLOWANCE OF THE WRIT.....6

CONCLUSION.....15

APPENDIX A: Eighth Circuit Opinion July 27, 2004 ..... 1a

APPENDIX B: United States District Court Memorandum and Order October 14, 2003 ..... 6a

APPENDIX C: United States Court of Appeals for the Eighth Circuit Order denying en banc petition for rehearing September 3, 2004 ..... 13a

APPENDIX D: Relevant Provisions ..... 15a

APPENDIX E: Petitioner's Amended Complaint filed in United States District Court on July 15, 2003 ..... 24a

# TABLE OF AUTHORITIES

**CASES** **PAGE**

Centifanti v. Nix, 865 F.2d 1422, 1430 (3rd Cir. 01/20/1989) ..... 11, 13

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983) ..... 10, 13

Holloway v. Arkansas State Bd. of Architects, 79 Ark. App. 200, 86 S.W.3d 391 (2002) ..... 3, 4

Holloway v. Arkansas State Board of Architects, 352 Ark. 427, 101 S.W.3d 805 (April 3, 2003) ..... 4

Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923) ..... 10

Van Harken v. City of Chicago, 103 F.3d 1346 (7th Cir. 01/06/1997) ..... 12

**STATUTES** **PAGE**

28 U.S.C. § 1254(1) ..... 1

28 U.S.C. § 1291 ..... 2

42 U.S.C. § 1983 ..... 11

A.C.A. § 17-15-101 ..... 2, 3, 4, 8

A.C.A. § 17-15-102 ..... 2

A.C.A. § 17-15-103 ..... 2, 5, 10

A.C.A. § 17-15-104 ..... 2, 5, 8, 10

A.C.A. § 17-30-101 ..... 2

A.C.A. § 17-30-104 ..... 2

A.C.A. § 25-15-201 ..... 3

## PETITION FOR WRIT OF CERTIORARI

Petitioner, Robert D. Holloway, respectfully petitions this Court for a writ of certiorari to review the opinion of the United States Court of Appeals for the Eighth Circuit, Case No. 03-3670, dated July 27, 2004.

## OPINIONS BELOW

The Eighth Circuit Court of Appeals opinion Holloway v. Arkansas State Board of Architects, et al No. 03-3670 (8th Cir. 2004) is unpublished. The opinion of the court is attached in Appendix A. The opinion of the District Court is also unpublished and is attached in Appendix B. Petition for Rehearing En Banc was denied. The order of the Court of Appeals denying the Petition for Rehearing En Banc is unpublished and is attached in Appendix C.

## JURISDICTIONAL STATEMENT

Petitioner asserts that this Court has discretionary jurisdiction to review this case pursuant to 28 U.S.C. § 1254(1). The opinion of the Eighth Circuit was filed July 27, 2004. See Appendix A. Petition for Rehearing En Banc was denied by Order filed on September 3, 2004. See Appendix C. The

Eighth Circuit's jurisdiction was based on 28 U.S.C. § 1291.

## RELEVANT PROVISIONS

A.C.A. § 17-15-101

A.C.A. § 17-15-102

A.C.A. § 17-15-103

A.C.A. § 17-15-104

A.C.A. § 17-30-101

A.C.A. § 17-30-104

The provisions of the above statutes are lengthy and, therefore, set out in Appendix D, pursuant to Supreme Court Rule 14.1(f).

## STATEMENT OF THE CASE

Sometime in 1999, a pre-engineered metal building was assembled for the Rosenbaum Industrial Supply Facility located on Doyle Venable Road in North Little Rock, Arkansas. The plans for the building were prepared and filed with the City of North Little Rock by Petitioner Robert D. Holloway ("Holloway"), a licensed Professional Engineer in the

state of Arkansas. On March 1, 2000, the Board of Architects filed and caused to be served on Holloway an Order and Notice of Hearing alleging Holloway engaged in the practice of architecture without a license in violation of the Arkansas Architectural Act codified in A.C.A. § 17-15-101 et seq.

On May 11, 2000, the Board of Architects conducted an administrative hearing in the matter. At the conclusion of the hearing, the Board of Architects concluded that Holloway had engaged in the practice of architecture without a license and imposed a $5,000 civil penalty against him.

On May 19, 2000, pursuant to the Arkansas Administrative Procedure Act codified at A.C.A. § 25-15-201 et seq., Holloway timely filed a petition of judicial review in the Pulaski County Circuit Court to review the decision of the Board of Architects. The Pulaski County Circuit Court affirmed the Board of Architects' decision affirming the Board of Architects. Holloway appealed the Pulaski County Circuit Court's decision to the Arkansas Court of Appeals. The Arkansas Court of Appeals affirmed in part the Pulaski County Circuit Court's decision but vacated the Board of Architects' penalty against Holloway and remanded the case for further fact finding by the Board of Architects. See Holloway v. Arkansas State Board of Architects, 79 Ark. App.

200, 86 S.W.3d 391 (September 25, 2002). The Board of Architects sought review of the Arkansas Court of Appeals decision in the Arkansas Supreme Court. On April 3, 2003, the Arkansas Supreme Court reversed the decision of the Arkansas Court of Appeals and affirmed the decision of the Pulaski County Circuit Court affirming the Board of Architects. See Holloway v. Arkansas State Board of Architects, 352 Ark. 427, 101 S.W.3d 805 (April 3, 2003).

On May 22, 2003, Holloway filed a complaint in United States District Court for the Eastern District of Arkansas against the appellees, Arkansas State Board of Architects (the "Board of Architects"), its executive director, John D. Harris, individually, and in his official capacity as executive director and the members of the Board of Architects, individually, and in their official capacities. In his original complaint Holloway alleged, *inter alia*, that the Arkansas statutes which define the practice of architecture in the state of Arkansas, A.C.A. § 17-15-101 et seq., were unconstitutionally vague and that the enforcement of the architecture statutes, particularly with regard to the Board of Architects' and its individual members' actions in charging Holloway with violating the architecture statutes by engaging in the practice of architecture without a license and imposing a $5,000 civil penalty against

him, violated his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution. In his original complaint, Holloway sought declaratory and injunctive relief as well as money damages against the individual defendants.

On July 15, 2003, Holloway filed an Amended Complaint which contained a Count V joining appellee, Jegley, in his official capacity as prosecuting attorney for the Sixth Judicial District and as a representative of a group of all other prosecuting attorneys in Arkansas, and appellee, Beebe, in his official capacity as Arkansas Attorney General. Holloway's Amended Complaint included a claim for prospective declaratory and injunctive relief against all of the appellees seeking relief from the criminal penal provisions set forth in A.C.A. § 17-15-103 and A.C.A. § 17-15-104. Specifically, Holloway alleged, *inter alia*, in Count V of the Amended Complaint, that he has in the past and will continue in the future to engage in the practice of engineering as permitted by the Arkansas statutes which define the practice of engineering and that as a result of the unconstitutional vagueness in the statutes which define the practice of architecture he is forced to practice his profession under fear and threat of criminal prosecution. See appendix E. Count V did not incorporate or reference the other counts contained in the Amended Complaint. The Board of

Architects, Jegley and Beebe filed motions to dismiss the Amended Complaint. On October 14, 2003, the United States District Court entered an order and judgment dismissing Holloway's entire Amended Complaint based upon the "Rooker-Feldman doctrine". From that order and judgment Holloway brought an appeal to the Eighth Circuit Court of Appeals. On July 27, 2004, the Eighth Circuit (Melloy, Hansen and Colloton, Circuit Judges) affirmed the District Court's decision. On August 5, 2004, Holloway filed a Petition for Rehearing En Banc; the Petition for Rehearing was denied on September 3, 2004. Holloway seeks review of the lower court's incorrect decision which clearly conflicts with decisions of both the Third and Seventh Circuits.

## REASONS FOR ALLOWANCE OF THE WRIT

### I.

WHETHER THE EIGHTH CIRCUIT ERRED IN AFFIRMING THE DISTRICT COURT'S ORDER DISMISSING PETITIONER'S ENTIRE AMENDED COMPLAINT PURSUANT TO THE "ROOKER-FELDMAN DOCTRINE" WHERE PETITIONER'S AMENDED

COMPLAINT CONTAINS A SEPARATE COUNT SEEKING PROSPECTIVE DECLARATORY AND INJUNCTIVE RELIEF? IN SO HOLDING, THE EIGHTH CIRCUIT'S DECISION DIRECTLY CONFLICTS WITH DECISIONS OF THE THIRD AND SEVENTH CIRCUITS.

In Count V of his Amended Complaint, which is attached in Appendix E, Holloway, a licensed Professional Engineer practicing in the state of Arkansas, seeks **prospective** declaratory and injunctive relief against the Arkansas State Board of Architects, Prosecuting Attorney Larry Jegley and Arkansas Attorney General Mike Beebe. In Count V of Holloway's Amended Complaint, Holloway makes the following allegations:

> (46) Holloway is a licensed, practicing professional engineer in the state of Arkansas. He has in the past and will continue in the future to engage in the practice of engineering in the state of Arkansas and all such actions permitted by the statutes defining the practice of engineering including providing consultation, investigation, evaluation, planning and design of buildings

intended for accommodation of equipment, vehicles, goods and/or processes or other utilitarian functions, with human occupancy including office space as required for support of these functions.

(47) The statutes which define the practice of architecture provide for criminal prosecution of any persons who violate the provisions of A.C.A. § 17-15-101 et seq. Defendant Larry Jegley, all other similarly situated prosecuting attorneys in the state of Arkansas and defendant Mike Beebe, as Attorney General for the state of Arkansas, are mandated pursuant to A.C.A. § 17-15-104 to prosecute all persons who violate the provisions of the statutes which define the practice of architecture.

(48) As a result of the vagueness of the statutes which define the practice of architecture, Holloway cannot determine what actions constitute the practice of architecture and what actions constitute the practice of engineering. Therefore, he cannot determine what actions permitted by the statutes which

define the practice of engineering may subject him to criminal prosecution under the statutes which define the practice of architecture.

(49) Holloway is forced to practice his profession under the fear and threat of criminal prosecution.

(50) Holloway requests a declaration from this Court that the Arkansas statutes which define the practice of architecture are void for vagueness and violate the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution. Holloway further requests that this Court permanently enjoin the Board of Architects, defendant Larry Jegley in his official capacity as prosecuting attorney for Pulaski County and Sixth Judicial District, all other similarly situated prosecuting attorneys in the state of Arkansas and defendant Mike Beebe as Attorney General of the state of Arkansas, from enforcing these statutes now and in the future.

Clearly, Holloway is seeking **prospective** declaratory and injunctive relief in Count V. He does not seek expressly or impliedly to review or overturn any previous state court decision nor does he seek to stop the enforcement of any previous state court decision against him in Count V. Count V is a separate count in Holloway's Amended Complaint; it does not incorporate or reference any other counts in Holloway's Amended Complaint. Holloway seeks relief from the district court so that he can practice his chosen profession without the fear and threat of criminal prosecution as provided in A.C.A. § 17-15-103 and A.C.A. § 17-15-104.

Under the "Rooker-Feldman doctrine", federal district courts do not have subject matter jurisdiction over challenges to state court decisions in judicial proceedings. Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983). The only federal court with jurisdiction to review decisions of state courts is the United States Supreme Court. The Third Circuit has specifically recognized that requests for **prospective** relief do not require relief of a previous state court decision, and therefore, do not violate the "Rooker-Feldman doctrine". Requests for prospective relief, although such relief, if granted, could affect future decisions of the state supreme court, would not require review of a past

decision. Centifanti v. Nix, 865 F.2d 1422, 1430 (3rd Cir. 01/20/1998).

In Centifanti v. Nix, supra. the Third Circuit dealt with the same issue as that presented in Holloway's case. In that case, the appellant, Centifanti, filed suit pursuant to 42 U.S.C. § 1983 against the Chief Justice and the Justices of the Supreme Court of Pennsylvania following their denial of his petition for reinstatement to the bar of Pennsylvania pursuant to the recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania. Centifanti's complaint alleged that the Supreme Court of Pennsylvania's promulgated procedural rules governing attorney reinstatement violated the due process and equal protection clauses of the fourteenth amendment to the United States Constitution. Id. at 1425-1426. On June 1, 1988, the district court dismissed Centifanti's complaint for lack of subject matter jurisdiction. Id. at 1426. The district court viewed Centifanti's complaint as an attempt to obtain improper review of the decision of the Supreme Court of Pennsylvania to deny his reinstatement. Id.

The Third Circuit reversed the district court. It found that Centifanti sought a declaratory judgment that "the rules and procedures for considering petitions for suspended attorneys are

unconstitutional" and that this would not require the district court to review the supreme court decision. Id. at 1429. "The declaratory judgment Centifanti seeks is prospective and directed toward "the rules and procedures for considering [future] petitions for reinstatement," rather than toward the decision of the state supreme court on Centifanti's prior petition." Id. The Third Circuit also found that the injunction sought by Centifanti was prospective. "He does not request the district court to interfere in any way with the decision of the Pennsylvania Supreme Court to deny his petition, or with the enforcement of that decision. Instead, he requests an injunction ordering the state court to correct alleged constitutional defects in the procedural rules applied in reaching that decision. Although such relief, if granted, could affect future decisions of the state supreme court, it would not require review of a past decision. Thus, we hold that the district court has subject matter jurisdiction over the due process claim." Id. at 1430.

Likewise, the Seventh Circuit has recognized the claims for prospective relief do not require review of a previous state court decision. In Van Harken v. City of Chicago, 103 F.3d 1346 (7th Cir. 01/06/1997), the appellants filed a class action against the City of Chicago alleging that its new procedures adjudicating parking violations violated due process under the United States and Illinois

constitutions. Id. at 1348. The City of Chicago argued that the suit amounted to a collateral attack on the judgments in the appellants' parking cases, and thus violates the "Rooker-Feldman doctrine". Id. The district court dismissed the suit. Id.

The Seventh Circuit disagreed. "Insofar as the plaintiffs merely seek a declaration that the procedures under which the parking charges against them were, or in the case of those members of the class whose cases have not yet been heard will be, adjudicated are constitutionally inadequate, they are not barred by "Rooker-Feldman" because they are not challenging the judgment in any parking case." Id. at 1349 (citing Buckley v. Illinois Judicial Inquiry Board, 997 F.2d 224, 227 (7th Cir. 1993); Nesses v. Shepherd, 68 F.3d 1003, 1005 (7th Cir. 1995); Dubinka v. Judges of Superior Court, 23 F.3d 218, 222 (9th Cir. 1994); Centifanti v. Nix, supra., 865 F.2d at 1429). "But insofar as they are seeking refunds of the parking fines imposed upon them, they are barred. The Feldman decision illustrates the distinction. It allowed the plaintiffs in that case to challenge the constitutionality of the rule under which they had been denied admission to the bar, while refusing to allow them to challenge the denial itself." Id. at 1349 (citing District of Columbia Court of Appeals v. Feldman, supra., 460 U.S. at 487-488).

Holloway's case is no different. In Count V of Holloway's Amended Complaint Holloway simply seeks to challenge the constitutionality of the statutes which define the professions of architecture and engineering in Arkansas as applied to his present and future practice of engineering. Admittedly, Holloway's Amended Complaint also contains other counts which seek to overturn a decision of the Arkansas State Board of Architects, which was ultimately affirmed by the Arkansas Supreme Court, which, arguably, may have required the dismissal of some of the Counts of the Amended Complaint; however, Count V of the Amended Complaint does not seek to overturn any previous court decision or the previous application of the architecture statutes to him by the Board of Architects. Pursuant to the Third and Seventh Circuit's application of the "Rooker-Feldman doctrine" in the above cited cases, the district court had subject matter jurisdiction over Count V of Holloway's Amended Complaint, and thus, it should not have been dismissed. The Eighth Circuit decision to affirm the district court's decision to dismiss Count V based upon the "Rooker-Feldman doctrine" was wrong and clearly and unquestionably conflicts with those decisions. Accordingly, this Court should grant Holloway's petition for writ of certiorari to resolve this conflict.

## CONCLUSION

For the reasons set forth above, petitioner asks this Court to issue a writ of certiorari to the United States Court of Appeals for the Eighth Circuit and reverse the decision of the Eighth Circuit in this matter and remand the case to the District Court for trial.

Respectfully submitted,

HANKINS LAW FIRM, P.A.
P.O. Box 5151
North Little Rock, AR 72119
(501) 371-9226
Attorneys for Petitioner

*STUART W. HANKINS
ARK. BIN 72050
A. VAUGHAN HANKINS
ARK. BIN 98138

*Counsel of Record

# APPENDIX A

## UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

---

**No. 03-3670**

---

| | | |
|---|---|---|
| Robert D. Holloway, | * | |
| | * | |
| Appellant, | * | |
| | * | Appeal from the |
| | * | United States District |
| | * | Court for the Eastern |
| | * | District of Arkansas |
| | * | |
| Arkansas State Board of | * | |
| Architects; John D. | * | [UNPUBLISHED] |
| Harris, individually and | * | |
| in his official capacity | * | |
| as director of the | * | |
| Arkansas State Board | * | |
| of Architects; Blake | * | |
| Dunn, individually and | * | |
| in his official capacity | * | |

as a member of the *
Arkansas State Board of *
Architects; Steve Miller, *
individually and in his *
official capacity as a *
member of the Arkansas *
State Board of *
Architects; Beth Leake, *
individually and in her *
official capacity as a *
member of the Arkansas *
State Board of *
Architects; Larry Black, *
individually and in his *
official capacity as a *
member of the Arkansas *
State Board of *
Architects; Cora *
Bradshaw, individually *
and in her official *
capacity as a member of *
the Arkansas State Board *
of Architects; Eugene *
Levy, individually and in *
his official capacity as a *
member of the Arkansas *
State Board of *
Architects; Larry *

McGowan, individually *
and in his official *
capacity as a member of *
the Arkansas State Board *
of Architects; Jeff *
Shannon, in his official *
capacity as a member of *
the Arkansas State Board *
of Architects; Larry *
Jegley, in his official *
capacity as prosecuting *
attorney for Pulaski *
County, Arkansas and *
the Sixth Judicial District *
on behalf of himself and *
other similarly situated *
persons; Mike Beebe, in *
his official capacity as *
Attorney General for the *
State of Arkansas, *
*
Appellees. *

---

Submitted: July 7, 2004
Filed: July 27, 2004

---

Before MELLOY, HANSEN, and COLLOTON, Circuit Judges.

---

PERCURIAM.

Robert D. Holloway appeals the district court's [1]dismissal of his 42 U.S.C. § 1983 action as barred by the Rooker-Feldman doctrine. See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); Dist. of Columbia Ct. of Appeals v. Feldman, 460 U.S. 462 (1983). After *de novo* review, see Charchenko v. City of Stillwater, 47 F.3d 891, 892-83 (8th Cir. 1995), we agree with the district court that it lacked jurisdiction, because Holloway's federal complaint raised constitutional challenges already decided by the Arkansas Supreme Court, albeit in a non-section 1983 action. See Bechtold v. City of Rosemount, 104 F.3d 1062, 1065 (8th Cir. 1997) (litigant cannot circumvent Rooker-Feldman by recasting lawsuit as § 1983 action). Holloway's claims for declaratory and injunctive relief were also barred, because any grant of relief would require the district court to make conclusions directly contrary to the decision of the state supreme court. See Lemonds v. St. Louis County, 222 F.3d 488, 492 (8th Cir. 2000) (Rooker-

---

[1] The Honorable Susan Webber Wright, Chief Judge, United District Court for the Eastern District of Arkansas.

Feldman bars indirect attempts to undermine state-court judgments); Keene Corp. v. Cass, 908 F.2d 293, 297 (8th Cir. 1990) (Rooker-Feldman doctrine applies to claims for declaratory and injunctive relief).

Accordingly, we affirm. See 8th Cir. R. 47B.

## APPENDIX B

**IN THE UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF ARKANSAS**
**WESTERN DIVISION**

| | | |
|---|---|---|
| ROBERT D. HOLLOWAY | * | |
| Plaintiff | * | |
| | * | NO. 4:03CV00365SWW |
| VS. | * | |
| ARKANSAS STATE BOARD OF ARCHITECTS, ET AL. | * | |
| Defendants | * | |

**MEMORANDUM AND ORDER**

Plaintiff Robert D. Holloway brings this lawsuit pursuant to 42 U.S.C. § 1983 against the Arkansas State Board of Architects and its members in their individual and official capacities; Larry Jegley, in his official capacity as the Pulaski County Prosecuting Attorney; and Mike Beebe, in his official

capacity as the Arkansas Attorney General. Holloway claims that Arkansas statutes defining the "the practice of architecture" are void for vagueness and, as applied to him, violate the Fourteenth Amendment's Due Process Clause. Before the Court are Defendants' motion to dismiss (docket entries #2, #10, #17, #19) and Holloway's responses (docket entries #5, #13, #25, #27). After careful consideration, the Court determines that Defendants' motions should be granted and this case should be dismissed with prejudice.

## I. Background

The following facts are undisputed. The Arkansas Architectural Act ("AAA") provides, in part, that "no person shall practice architecture in this state, or engage in preparation of plans, specifications, or preliminary data for the erection or alteration of any building...unless the person shall have secured from the examining body a certificate of registration and license in the manner hereinafter provided...." Ark. Code Ann. § 17-15-301.

Sometime in 1999, Holloway, a licensed engineer, prepared and filed plans for a pre-engineered metal building for Rosenbaum Industrial Supply Company in North Little Rock. *See* docket

entry #9, at 8. In September 1999, the Arkansas State Board of Architects ("Board") received a complaint from a local architect, reporting that Holloway failed to obtain the services of an architect in planning for the building. *See id.*, Ex. B.

The Board notified Holloway of the allegations against him and gave him an opportunity to respond. *See id.*, Ex. C. Holloway responded, by letter, that he had no intention of encroaching on other "design professionals." *See id.*, Ex. D. In March 2000, the Board notified Holloway that a hearing would be held to determine whether his work on the Rosenbaum building amounted to practicing architecture without a license, in violation of § 17-15-301. *See id.*, Ex. E. Holloway's attorney appeared at the hearing and argued, among other things, that provisions of the AAA that define the practice of architecture are unconstitutionally vague and, as applied, violate Holloway's right to due process. The hearing officer determined that the Board had no authority to address Holloway's constitutional challenges. After considering evidence presented at the hearing, the Board found Holloway guilty of violating § 17-15-301 and imposed a $5,000 penalty. *See id.*, Ex. F.

Holloway appealed to circuit court, presenting the same arguments he raised before the Board. The

circuit court affirmed the board's decision, and Holloway appealed to the Arkansas Court of Appeals. The court of appeals remanded the case to the Board, with instructions to conduct further fact finding and rule on Holloway's constitutional challenges. The Board filed a petition for review with the Supreme Court of Arkansas, which the court granted. The court considered the merits of Holloway's void-for-vagueness claim and held that the licensing statutes defining the practice of architecture were not unconstitutionally vague and did not, as applied to Holloway, violate due process guarantees. *SeeHolloway v. Arkansas State Bd. of Architects*, 101 S.W.3d 805, 812 (Ark. 2003).

On May 22, 2003, Holloway initiated this lawsuit claiming that (1) provisions of the AAA defining the practice of architecture are void for vagueness in violation of the Untied States Constitution and (2) the Board's attempts to enforce the provisions against Holloway violate his right to due process. *See* docket entry #9, ¶ 16. Holloway requests declaratory relief, compensatory and punitive damages, and an injunction enjoining the Board and Defendants Jegley and Beebe from enforcing AAA provisions that define the practice of architecture.

## II. Discussion

Defendants have filed motions to dismiss asserting several grounds for relief, including that Holloway's claims are barred under the *Rooker-Feldman* doctrine.[1]

The *Rooker-Feldman* doctrine provides that, with the exception of habeas corpus petitions, original federal jurisdiction over state court judgments is reserved to the untied States Supreme Court. Federal district courts have no jurisdiction when the constitutional claims raised in a case are "inextricably intertwined" with a state-court decision. *See Charchenko v. City of Stillwater*, 47 F.3d 981, 983 (8th Cir. 1995).

A claim is inextricably intertwined with a state court decision if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. *Lemonds v. St. Louis County*, 222 F.3d 488, 493 (8th Cir. 2000) (citing *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25, 107 S.Ct. 1519, 1533 (1987) (Marshall, J. concurring). In other words, *Rooker-Feldman* precludes a federal action if the

---

[1] In their motions to dismiss, all Defendants, with the exception of Attorney General Beebe, assert that pursuant to the *Rooker-Feldman* doctrine, this Court lacks subject matter jurisdiction to entertain Holloway's claims. Although Defendant Beebe did not move for dismissal on the basis of *Rooker-Feldman*, the motions filed by the Board, its members, and Defendant Jegley gave Holloway the opportunity to demonstrate why his claims should not be dismissed pursuant to *Rooker-Feldman*.

relief requested would effectively reverse a state court decision or void its ruling.

The constitutional claims raised by Holloway in this case are identical to those he pursued in state court- that provisions of the AAA defining the practice of architecture are void for vagueness, and the Board's attempts to enforce the provisions against Holloway violate his right to due process. The Supreme Court of Arkansas considered and rejected these claims. *See Holloway*, 101 S.W.3d at 812 (concluding after a detailed review that "the statutes Holloway challenges are not void for vagueness").

A judgment in Holloway's favor would effectively reverse the decision of the Supreme Court of Arkansas. Nonetheless, Holloway contends that the doctrine does not bar his claims because "the § 1983 claims filed by Holloway have not been filed in any previous judicial proceeding, administrative or otherwise, and have not been decided by any state court." Docket entry #14, at 9. This argument is without merit. First, Holloway cannot circumvent the *Rooker-Feldman* doctrine by recasting the arguments he presented in state court as a § 1983 action. *Bechtold v. City of Rosemount*, 104 F.3d 1062, 1065 (8th Cir. 1997) (citing *Keene Corp. v. Cass*, 908 F.2d 293, 297 (8th Cir. 1990)). Second, the fact that Holloway did not pursue his claims in a state court

proceeding that he initiated is of no consequence. Third, as explained above, Holloway's claims were most certainly decided by a state court.

## III. Conclusion

IT IS THEREFORE ORDERED that Defendants' motions to dismiss (#2, #10, #17, #19) are hereby GRANTED. Pursuant to the judgment entered together with this order, this case is hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED THIS 14TH DAY OF OCTOBER, 2003.

s/Susan Weber Wright
CHIEF JUDGE
UNITED STATES DISTRICT COURT

THIS DOCUMENT ENTERED ON DOCKET SHEET IN COMPLIANCE WITH RULE 58 AND/OR 79(A) FRCP ON 10-14-03 BY _____

# APPENDIX C

## UNITED STATES COURT OF APPEALS
## For The Eighth Circuit

No. 03-3670

| | | |
|---|---|---|
| Robert D. Holloway, | * | |
| | * | |
| Appellant | * | |
| | * | |
| vs. | * | Order Denying Petition |
| | * | for Rehearing and for |
| Arkansas State Board of | * | Rehearing En Banc |
| Architects, et al., | * | |
| | * | |
| Appellees. | * | |

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

September 3, 2004

Order Entered at the Direction of the Court:

s/Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

# APPENDIX D

## A.C.A. § 17-15-101. Title.

This chapter may be known and cited as the "Arkansas Architectural Act".

History. Acts 1941, No. 270, § 15.

A.S.A. 1947, § 71-313.

## A.C.A. § 17-15-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Architect" means a person who is technically and legally qualified to practice architecture;

(2) "Examining body" means the Arkansas State Board of Architects as established by this chapter;

(3) "Direct supervision" means that degree of supervision by a person overseeing the work of another whereby the supervisor has both control over and detailed professional knowledge of the work prepared under his or her supervision;

(4)(A) "Good moral character" means character which will enable a person to discharge the fiduciary duties of an architect to his or her client and to the public for the protection of health, safety, and welfare.

(B) Evidence of inability to discharge such duties shall include the commission of an offense justifying discipline under § 17-15-308;

(5)(A)(i) "Practice of architecture" means the provision of, or offering to provide, those services hereinafter described in connection with the design and construction, enlargement, or alteration of a building or group of buildings, and the space within and surrounding such buildings, which is designed for human occupancy or habitation. The services referred to include planning, providing preliminary studies, designs, drawings, specifications, and other technical submissions, and administration of construction contracts.

(ii) Provided, that the practice of architecture shall not include the practice of engineering as defined in the Arkansas Engineering Act, § 17-30-101 et seq., or the practice of contracting as defined in the Contractors Licensing Law, § 17-25-101 et seq., but a registered architect may perform such engineering work as is incidental to the practice of architecture,

and an engineer may practice such architectural work as is incidental to the practice of engineering.

(B) The provisions of this chapter affirm the legal authority of an engineer licensed under the Arkansas Engineering Act, § 17-30-101 et seq., to provide consultation, investigation, evaluation, planning, and design of buildings intended for the accommodation of equipment, vehicles, goods, and/or processes or other utilitarian function, with human occupancy including office space as required for the support of these functions, provided the engineer is practicing within his or her area of competency as defined in the Arkansas Engineering Act, § 17-30-101 et seq;

(6) "Registered architect" means an architect holding a current registration in the State of Arkansas;

(7) "Registration" means the certificate of registration issued by the examining body; and

(8) "Technical submissions" means drawings, specifications, studies, and other technical reports prepared in the course of practicing architecture.

History. Acts 1941, No. 270, §§ 1, 14; Acts 1993, No. 578, § 1; 1995, No. 860, § 1.

A.S.A. 1947, §§ 71-301, 71-312.

## A.C.A. § 17-15-103. Penalties.

A person shall be guilty of a misdemeanor and shall upon conviction be sentenced to pay a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500) or suffer imprisonment for a period not exceeding three (3) months, or be both so fined and imprisoned, each day of the unlawful practice to constitute a distinct and separate offense, if that person shall:

(1) Practice or offer to practice the profession of architecture in this state without being registered or exempted therefrom in accordance with the provisions of this chapter;

(2) Give any false or forged evidence of any kind to the Arkansas State Board of Architects or to any member thereof for the purpose of obtaining a certificate of registration;

(3) Falsely impersonate any other registrant of like or different name;

(4) Attempt to use an expired or revoked certificate of registration; or

(5) Violate, or aid or abet any violation of, any of the provisions of this chapter.

History. Acts 1941, No. 270, § 7.

A.S.A. 1947, § 71-308.

**A.C.A. § 17-15-104. Enforcement.**

(a) It shall be the duty of all duly constituted officers of the law in this state, and of all political subdivisions, to enforce the provisions of this chapter and to prosecute any persons violating its provisions.

(b) The Attorney General or his or her assistants shall act as legal advisor to the Arkansas State Board of Architects and shall render any legal assistance that may be necessary in carrying out the provisions of this chapter. The examining body, in its discretion, may employ other legal assistance that it may require.

History. Acts 1941, No. 270, § 11.

A.S.A. 1947, § 71-311.

**A.C.A. 17-30-101. Definition.**

As used in this chapter, unless the context otherwise requires:

(1) "Board" means the State Board of Registration for Professional Engineers and Land Surveyors, hereinafter provided by this chapter;

(2) "Consulting engineer" means a professional engineer whose principal occupation is the independent practice of engineering, whose livelihood is obtained by offering engineering services to the public, who serves clients as an independent fiduciary, who is devoid of public, commercial, and product affiliation that might tend to infer a conflict of interest, and who is cognizant of his or her public and legal responsibilities, and is capable of discharging them;

(3) "Engineer-intern" means a person who has qualified for, taken, and has passed an examination in the fundamental engineering subjects, as provided in this chapter;

(4)(A) "Practice of engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge in the mathematical, physical, and engineering sciences to services or creative work such as consultation, investigation, evaluation, planning, and design of engineering works and systems relating to the use of air, land, water, municipal and regional planning, forensic services, engineering teaching of advanced

engineering subjects or courses related thereto, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications, any of which embraces service or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects including such architectural work as is incidental to the practice of engineering.

(B) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who:

(i) Practices any branch of the profession of engineering;

(ii) By verbal claim, sign advertisement, letterhead, card, or in any other way represents himself or herself to be an engineer;

(iii) Through the use of some other title implies that he or she is an engineer or that he or she is registered under this chapter; or

(iv) Holds himself or herself out as able to perform or does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

(C) The term "practice of engineering" shall not include persons who merely operate or maintain machinery or equipment.

(D) The practice of engineering shall not include the act of measuring land or drawing or reading plans or other work normally done by mechanics, technicians, land surveyors, or draftsmen;

(5) "Professional engineer" means a person who has been duly registered or licensed as a professional engineer by the board; and

(6) "Responsible charge" means direct control of, supervision of, and legal responsibility for all engineering work performed.

History. Acts 1953, No. 214, § 3; 1969, No. 196, § 1; Acts 1993, No. 1041, § 1.

A.S.A.1947, § 71-1020.

**A.C.A. § 17-30-104. Construction.**

The provisions of this chapter affirm the legal authority of an engineer licensed under its provisions to provide consultation, investigation, evaluation, planning, and design of buildings intended for accommodation of equipment, vehicles, goods, and/or processes or other utilitarian functions, with

human occupancy including office space as required for the support of these functions, provided the engineer is practicing within his or her area of competency as defined by this chapter.

History. Acts 1993, No. 1041, § 1; 1995, No. 834, § 1.

# APPENDIX E

**IN THE UNITED STATES DISTRICT COURT**
**For The Eastern District of Arkansas**
**Western Division**

**ROBERT D. HOLLOWAY** **PLAINTIFFS**

**vs.** **Case No. 4-03-CV-00365 SWW**

**ARKANSAS STATE BOARD OF ARCHITECTS; ET AL** **DEFENDANTS**

## AMENDED COMPLAINT

Comes the defendant, Robert D. Holloway ("Holloway"), by and through his attorneys, Hankins and Hicks, and for his Amended Complaint against defendants, ARKANSAS STATE BOARD OF ARCHITECTS; JOHN D. HARRIS, individually and in his official capacity as director of the Arkansas State Board of Architects; BLAKE DUNN, individually and in his official capacity as a member of the Arkansas State Board of Architects; STEVE MILLER, individually and in his official capacity as a member of the Arkansas State Board of Architects; BETH LEAKE, individually and in her official

capacity as a member of the Arkansas State Board of Architects; LARRY BLACK, individually and in his official capacity as a member of the Arkansas State Board of Architects; CORA BRADSHAW, individually and in her official capacity as a member of the Arkansas State Board of Architects; EUGENE LEVY, individually and in his official capacity as a member of the Arkansas State Board of Architects; LARRY McGOWAN, individually and in his official capacity as a member of the Arkansas State Board of Architects; JEFF SHANNON, in his capacity as a member of the Arkansas State Board of Architects; LARRY JEGLEY, in his official capacity as prosecuting attorney for Pulaski County, Arkansas and the Sixth Judicial District on behalf of himself and other similarly situated persons; and MIKE BEEBE, in his official capacity as Attorney General for the state of Arkansas, states:

(1) The plaintiff is a resident of Pulaski County, Arkansas, and is a licensed professional engineer in the state of Arkansas.

(2) The defendant, Arkansas State Board of Architects (the "Board of Architects") is an agency of the state of Arkansas formed pursuant to A.C.A. § 17-15-101 et seq. and maintains its principal offices in Pulaski County, Arkansas.

(3) Upon knowledge and belief defendant, John D. Harris, is a resident of Pulaski County, Arkansas and at all times described herein was the acting executive director of the Board of Architects.

(4) Upon knowledge and belief defendant, Blake Dunn, is a resident of Union County, Arkansas and at all times described herein was a member of the Board of Architects.

(5) Upon knowledge and belief defendant, Steve Miller, is a resident of Washington County, Arkansas and at all times described herein was a member of the Board of Architects.

(6) Upon knowledge and belief defendant, Beth Leake, is a resident of Pulaski County, Arkansas and at all times described herein was a member of the Board of Architects.

(7) Upon knowledge and belief defendant, Larry Black, is a resident of Saline County, Arkansas and at all times described herein was a member of the Board of Architects.

(8) Upon knowledge and belief defendant, Cora Bradshaw, is a resident of Lincoln County,

Arkansas and at all times described herein was a member of the Board of Architects.

(9) Upon knowledge and belief defendant, Eugene Levy, is a resident of Pulaski County, Arkansas and at all times described herein was a member of the Board of Architects.

(10) Upon knowledge and belief defendant, Larry McGowan, is a resident of Sebastian County, Arkansas and at all times described herein was a member of the Board of Architects.

(11) Defendants, John D. Harris, Blake Dunn, Steve Miller, Beth Leake, Larry Black, Cora Bradshaw, Eugene Levy and Larry McGowan, are hereinafter collectively referred to as the "individual Board members".

(12) Upon knowledge and belief defendant, Jeff Shannon, is a resident of Washington County, Arkansas and is currently a member of the Board of Architects; however, upon knowledge and belief he was not a member of the Board of Architects at the times described herein.

(13) Defendant Larry Jegley is the duly elected and acting prosecuting attorney for Pulaski County, Arkansas and the Sixth Judicial District. Holloway brings this action against this named defendant in his official capacity and as a representative of a group of all other prosecuting attorneys for all other counties and judicial districts in the state of Arkansas.

(14) Defendant Mike Beebe is the duly elected and acting Attorney General for the state of Arkansas.

(15) At all times relevant to this action the defendants were and are currently acting under color of state law.

(16) Holloway contends that the provisions of A.C.A. § 17-15-101 et seq. which define the practice of architecture are void for vagueness under the United States Constitution. Holloway further contends that the Board of Architects' attempts to enforce the provisions of A.C.A. § 17-15-101 et seq. against Holloway, a licensed engineer, constitute violations of due process under the Fifth and Fourteenth Amendments to the United States Constitution. For these reasons, the plaintiff seeks

declaratory relief, injunctive relief and money damages pursuant to 42 U.S.C. § 1983.

(17) This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and civil rights jurisdiction pursuant to 28 U.S.C. § 1343.

(18) The Court has venue pursuant to 28 U.S.C. § 1391.

(19) A.C.A. § 17-15-102 sets forth the state of Arkansas' definition of the practice of architecture. A.C.A. § 17-15-102(5)(A)(ii) and (B) provides as follows:

> (5)(A)(ii) Provided, that the practice of architecture shall not include the practice of engineering as defined in the Arkansas Engineering Act, § 17-30-101 et seq., or the practice of contracting as defined in the Contractors Licensing Law, § 17-25-101 et seq., but a registered architect may perform such engineering work as is incidental to the practice of architecture, and an engineer may practice such architectural work as is incidental to the practice of engineering.

(B) The provisions of this chapter affirm the legal authority of an engineer licensed under the Arkansas Engineering Act, § 17-30-101 et seq., to provide consultation, investigation, evaluation, planning, and design of buildings intended for the accommodation of equipment, vehicles, goods, and/or processes or other utilitarian function, with human occupancy including office space as required for the support of these functions, provided the engineer is practicing within his or her area of competency as defined in the Arkansas Engineering Act, § 17-30-101 et seq.

(20) A.C.A. § 17-30-101 and A.C.A. § 17-30-104 set forth the state of Arkansas' definition of the practice of engineering.

(21) A.C.A. § 17-30-101(4)(A) provides as follows:

**17-30-101. Definition.**

As used in this chapter, unless the context otherwise requires:

(4) (A) "Practice of engineering" means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge in the mathematical, physical, and engineering sciences to services or creative work such as consultation, investigation, evaluation, planning, and design of engineering works and systems relating to the use of air, land, water, municipal and regional planning, forensic services, engineering teaching of advanced engineering subjects or courses related thereto, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications, any of which embraces service or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects including such architectural work as is incidental to the practice of engineering.

(22) A.C.A. § 17-30-104 provides as follows:

**17-30-104. Construction.**

> The provisions of this chapter affirm the legal authority of an engineer licensed under its provisions to provide consultation, investigation, evaluation, planning, and design of buildings intended for accommodation of equipment, vehicles, goods, and/or processes or other utilitarian functions, with human occupancy including office space as required for the support of these functions, provided the engineer is practicing within his or her area of competency as defined by this chapter.

(23) The Arkansas' statutory definition of the practice of architecture set forth in A.C.A. § 17-15-102 specifically exempts from its definition the Arkansas' statutory definition of the practice of engineering. Therefore, the Arkansas statutory definition of the practice of architecture is specifically and wholly dependent upon the Arkansas' statutory definition of the practice of engineering.

(24) A.C.A. § 17-30-104 permits a licensed engineer to "provide consultation, investigation, evaluation, planning and design of buildings intended

for accommodation of equipment, vehicles, goods and/or processes or other utilitarian functions, with human occupancy including office space as required for support of these functions." The statutes which define the practice of engineering are vague and ambiguous. They do not identify how much "human occupancy including office space" a building can have for an engineer to be able to work on it nor do they identify or specify to what "other utilitarian function" refers. In other words, the statutes which define the practice of engineering do not specify or otherwise give fair warning as to when an engineer "crosses the line" and performs architectural work which will subject him or her to the penal provisions contained in the statutes which define the practice of architecture.

(25) Additionally, as a result of the obvious vagueness in the statutes, the Board of Architects must not only subjectively determine what constitutes the practice of architecture, it must also subjectively determine what constitutes the practice of engineering, in order to determine what conduct is "incidental to the practice of engineering" and what legal exceptions to the Arkansas statutory definition of the practice of architecture apply, particularly those with respect to the state of Arkansas' statutory definition of the practice of engineering. The Board of Architects does not have the right, power or

authority, statutorily or otherwise, to define the practice of engineering.

(26) The statutes which define the practice of architecture contain certain penal provisions for violations of the statutes. These penal provisions are set forth in A.C.A. § 17-15-203(d)(4)(A)(i). A.C.A. § 17-15-104 also provides for the criminal prosecution of any persons who violate the provisions of A.C.A. § 17-15-101 et seq. A.C.A. § 17-15-104(a) provides in relevant part, "[i]t shall be the duty of all duly constituted officers of the law in this state, and of all political subdivisions, to enforce the provisions of this chapter and to prosecute any persons violating its provisions."

(27) Sometime prior to September 21, 1999, the Board of Architects entered into and jointly adopted a Resolution with the Arkansas Board of Registration for Professional Engineers and Land Surveyors (the "Resolution"). A true and correct copy of the Resolution is attached hereto as Exhibit "A". In the Resolution, the Board of Architects expressly acknowledged the overlap of the professions of architecture and engineering as defined by the Arkansas statutes and impliedly acknowledged ambiguities in the Arkansas statutes defining the practice of architecture and the practice of engineering. The individual Board members were all

aware of the Resolution and of the overlap of the professions of architecture and engineering as defined by the Arkansas statutes and of the ambiguities in those statutes.

(28) Sometime in 1999, a pre-engineered metal building was assembled for the Rosenbaum Industrial Supply Facility located on Doyle Venable Road in North Little Rock, Arkansas (the "building").

(29) The plans for the building were prepared and filed with the City of North Little Rock by Holloway.

(30) On or about September 21, 1999, Tim Yelvington, an architect, wrote a letter to the Board of Architects to file a complaint with the Board of Architects against Holloway for his work on the building and the building plans. A true and correct copy of Yelvington's letter is attached hereto as Exhibit "B".

(31) In response to Yelvington's letter, the Board of Architects, through its Executive Director, defendant John D. Harris, sent a letter dated November 10, 1999 to Holloway notifying Holloway of the Board of Architects' receipt of Yelvington's letter and of its initiation of an investigation of the

allegations raised by Yelvington. A true and correct copy of the Board of Architects' letter is attached hereto as Exhibit "C".

(32) On or about January 19, 2000, Holloway, by letter, responded to the Board of Architects' letter. In his letter Holloway enclosed a copy of his December 2, 1999 letter he had previously sent to the Board of Architects in response to the Exhibit "C" letter. In his letter, Holloway states, inter alia, "I want assure you that we have no intention of trying to encroach on other design professionals. It was my understanding that this facility was well within that realm of activity." True and correct copies of the January 19, 2000 and December 2, 1999 letters are attached hereto as Exhibit "D".

(33) On March 1, 2000, the Board of Architects filed and caused to be served on Holloway an Order and Notice of Hearing ("Notice") wherein the following factual allegations were made:

> 1. Robert Holloway is not a licensed architect in the state of Arkansas.

2. Mr. Holloway prepared drawings and specifications for the Rosenbaum Industrial Supply facility on Doyle Venable Road, North Little Rock, Arkansas. The project is a pre-engineered metal building with a dry-vit façade.

3. The approximate size of the project is 144 feet by 93 feet. The building consists mainly of office space with a small amount of storage.

4. The primary purpose of the facility is for human occupancy or habitation and the cost is in excess of $100,000.00.

Based upon the factual allegations contained in the Notice, the Board of Architects further alleged that Holloway violated A.C.A. § 17-15-203(4)(A)(i) by engaging in the practice of architecture as defined in A.C.A. § 17-15-101 et seq. without a license. A true and correct copy of the Notice is attached hereto as Exhibit "E".

(34) On May 11, 2000, the Board of Architects conducted a hearing on the allegations

against Holloway. The only testimony offered by the Board of Architects in its case-in-chief against Holloway was that of defendant John Harris. Following the hearing and above Holloway's counsels' objections, the Board of Architects issued its Findings of Fact, Conclusions of Law and Order (the "Order") assessing a $5,000 civil penalty against Holloway. A true and correct copy of the Order is attached hereto as Exhibit "F".

(35) Despite the Board of Architects and the individual Board members' knowledge of the obvious ambiguities in the statutes which define the practice of architecture and the obvious "overlap" in the statutory definitions of the practices of architecture and engineering, the individual Board members acting in concert knowingly and willfully imposed a $5,000.00 civil penalty against Holloway in violation of Holloway's right to fair warning and right to be free from punishment based upon impermissibly vague regulation under the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution.

**COUNT I**
**DECLARATORY RELIEF**

(36) The Arkansas statutes which define the practice of architecture are void for vagueness and violate the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution.

(37) The Arkansas statutes governing the practices of architecture and engineering do not define, with sufficient definiteness, so that ordinary people can understand what constitutes the practice of architecture and what constitutes the practice of engineering. An ordinary person, like Holloway is forced to guess as to when he might be practicing architecture as opposed to practicing engineering and thereby, potentially subjecting himself to the criminal and civil penal provisions of the statutes which define the practice of architecture.

(38) Holloway requests a declaration from this Court that the Arkansas statutes which define the practice of architecture are void for vagueness and violate the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

**COUNT II**
**DECLARATORY RELIEF**

(39) Because of the dubious wording of the Arkansas statutes which define the practice of architecture, the Board of Architects is placed in the position of interpreting the statutes defining the practice of engineering, which is outside the scope of its statutory authority and outside the scope of the education, training and experience of its individual members.

(40) Holloway requests a declaration from this Court that the Board of Architects acts outside the scope of its authority when it interprets the Arkansas statutes defining the practice of engineering and that its actions in this regard violate the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

**COUNT III**
**INJUNCTIVE RELIEF**

(41) As a direct and proximate result of the Board of Architects' enforcement of unconstitutionally void Arkansas statutes, Holloway has been assessed a $5,000.00 civil penalty.

(42) The Board of Architects should be temporarily enjoined from taking any action to

collect such civil penalty against Holloway pending the final resolution of this case.

(43) Further, should this Court find that the Arkansas statutes which define the practice of architecture are unconstitutional, the Board of Architects should be permanently enjoined from attempting to collect such civil penalty from Holloway now or in the future.

## COUNT IV
## VIOLATION OF DUE PROCESS – DAMAGES

(44) Despite the individual Board members' knowledge of the obvious ambiguities in the Arkansas statutes which define the practice of architecture and express acknowledgement of the overlap of the professions of engineering and architecture, the individual Board members in concert knowingly and willfully imposed a $5,000.00 civil penalty against Holloway in violation of Holloway's right to fair warning and right to be free from punishment based upon impermissibly vague regulation under the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

(45) As a direct and proximate result of this violation Holloway has suffered mental anguish, humiliation and embarrassment and is, therefore, entitled to an award of compensatory and punitive damages against the individual Board members in their individual capacities.

## COUNT V
## DECLARATORY RELIEF AND INJUNCTIVE RELIEF

(46) Holloway is a licensed, practicing professional engineer in the state of Arkansas. He has in the past and will continue in the future to engage in the practice of engineering in the state of Arkansas and all such actions permitted by the statutes defining the practice of engineering including providing consultation, investigation, evaluation, planning and design of buildings intended for accommodation of equipment, vehicles, goods and/or processes or other utilitarian functions, with human occupancy including office space as required for support of these functions.

(47) The statutes which define the practice of architecture provide for criminal prosecution of any persons who violate the provisions of A.C.A. § 17-15-101 et seq. Defendant Larry Jegley, all other

similarly situated prosecuting attorneys in the state of Arkansas and defendant Mike Beebe, as Attorney General for the state of Arkansas, are mandated pursuant to A.C.A. § 17-15-104 to prosecute all persons who violate the provisions of the statutes which define the practice of architecture.

(48) As a result of the vagueness of the statutes which define the practice of architecture, Holloway cannot determine what actions constitute the practice of architecture and what actions constitute the practice of engineering. Therefore, he cannot determine what actions permitted by the statutes which define the practice of engineering may subject him to criminal prosecution under the statutes which define the practice of architecture.

(49) Holloway is forced to practice his profession under the fear and threat of criminal prosecution.

(50) Holloway requests a declaration from this Court that the Arkansas statutes which define the practice of architecture are void for vagueness and violate the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution. Holloway further requests that this Court permanently enjoin the Board of Architects,

defendant Larry Jegley in his official capacity as prosecuting attorney for Pulaski County and Sixth Judicial District, all other similarly situated prosecuting attorneys in the state of Arkansas and defendant Mike Beebe as Attorney General of the state of Arkansas, from enforcing these statutes now and in the future.

WHEREFORE, plaintiff, Robert D. Holloway, prays for the declaratory, injunctive and monetary relief requested herein, for his costs incurred, for his reasonable attorneys fees and for all other just and proper relief to which he is entitled.

HANKINS & HICKS
P.O. Box 5670
North Little Rock, AR 72119
(501) 371-9226

Attorneys for Plaintiff
Robert D. Holloway

s/A. Vaughan Hankins
STUART W. HANKINS
ARK. BIN 72050
A. VAUGHAN HANKINS
ARK. BIN 98138

CERTIFICATE OF SERVICE

This is to certify that a copy of the above and foregoing pleading was mailed to Patricia Van Ausdall Bell, Assistant Attorney General, 323 Center Street, 200 Catleet-Prien Building, Little Rock, Arkansas 72201-2610 on this 15th day of July, 2003.

s/A. Vaughan Hankins
STUART W. HANKINS
A. VAUGHAN HANKINS